The Act provides for a tax on the net income of all corporations organized for profit and engaged in business, such net income to be ascertained by deducting from the gross income all losses, expenses, etc., including a reasonable allowance for depreciation of property. See U. S. COMP. STAT., 1913, §§ 6300, 6301. It is manifestly immaterial to the character of the royalties whether the owner of a mine himself extracts and disposes of the minerals or grants to another the right to do so. So the question is whether the value of the ore as it leaves the mine is income or converted capital and hence depreciation. It is submitted that, since part of the capital of a mine is its ore, the ore subtracted represents converted capital. Hence only the market value of the product minus the value of the ore in place and the cost of mining represents income. But the decisions now run *contra*. *State* v. *Royal Mineral Association*, 156 N. W. 128 (Minn.); *Raynolds* v. *Hanna*, 55 Fed. 783; *Stratton's Independence* v. *Howbert*, 231 U. S. 399. See *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103, 114. It would follow that the ore extracted is an exhaustion of the capital and so depreciation. *United States* v. *Nipissing Mines Co.*, 202 Fed. 803. See MACHEN, THE FEDERAL CORPORATION TAX LAW, § 57. It seems significant that in the Income Tax section of the Tariff Act of 1916 and in the Income Tax Law, Congress specifically provided an allowance for the depletion of mines. See 38 STAT. AT L. 166, 167; 1915–1916 STAT. 756, 759. But there is no more reason to suppose that Congress did not intend the word "depreciation" in the former act to include such depletion than to conclude that the later acts seek to be more concise in expressly including what the former implied.

TAXATION — FRANCHISE TAX ON CORPORATION INCORPORATED IN MORE THAN ONE STATE — DUE PROCESS. — The plaintiff railroad was incorporated in and had lines running through Alabama, Tennessee, and Mississippi. Alabama levied upon corporations organized under her laws a franchise tax, based upon the total paid-up capital stock of such corporations. *Held*, the plaintiff must pay the tax. *Kansas City, M. & B. R. Co.* v. *Stiles*, 37 Sup. Ct. Rep. 58.

For a discussion of this case, see NOTES, p. 510.

TORTS — DESTRUCTION OF EVIDENCE — EFFECT OF PROBATE OF WILL. — The deceased left a will containing a legacy for the plaintiff. The defendants maliciously destroyed parts of the document with the intent to deprive the plaintiff of the legacy. As a result, a prior will was probated and the plaintiff has not enough evidence to prove the entire contents of the second will. She sues in tort alleging these facts, to which the defendants demur. *Held*, that the demurrer be overruled. *Dulin* v. *Bailey*, 90 S. E. 689 (N. C.).

It is a tort principle that an intentional injury without justification creates liability. So it would seem sufficient, to support the plaintiff's action, to proceed on general lines, asserting the loss of a legacy by the defendants' intentional wrongful act. But the same result may be reached on the theory of the violation of a specific right, *i.e.*, to evidence. For that there is an actionable right to evidence is established. *Davis* v. *Lovell*, 8 L. J. Ex. (N. S.) 152; *Lane* v. *Cole*, 12 Barb. (N. Y.) 680. On this theory it is not even necessary to prove the loss of the legacy — a substantial loss of evidence will itself support the action. *Cowling* v. *Coxe*, 18 L. J. C. P. (N. S.) 100; *Lane* v. *Cole*, *supra*. But the desired damages will certainly be the amount of the bequest. Both theories are thus faced with the necessity of proving what the probate court has apparently denied — the right to a bequest under what is claimed to be the real will of the testator. So the question arises why the decision of the probate court is not *res judicata* of the plaintiff's present contention. To procure the probate of a will requires the proof of the entire contents of the will by clear and satisfactory evidence. See *In re Hedgepeth's Will*, 150 N. C. 245, 249, 250, 63 S. E. 1025, 1026, 1027. WIGMORE, EVIDENCE, § 2106. But a legatee may fail to

bear the burden of such proof and yet satisfy a court requiring the proof of a single legacy by a preponderance of evidence. For this reason the issues in the tort action are not made *res judicata* by the probate decree. *Hibshman* v. *Dulleban*, 4 Watts (Pa.) 183; *Angel* v. *Hollister*, 38 N. Y. 378; *Long* v. *Baugas*, 2 Ired. (N. C.) 290.

TORTS — STATUTORY LIABILITY — INFANTS — WHETHER INFANT'S DECEIT BARS ACTION UNDER CHILD LABOR STATUTE. — While employed in the defendant's plant, in violation of a child labor law, a minor sustained injuries. Neither party was negligent. The minor had represented himself as of legal age. His mother now sues in his behalf. *Held*, that she can recover. *Alexander* v. *Standard Oil Co.*, 72 So. 806 (La.).

It is settled that a violation of a child labor law followed by injury in the employment gives a cause of action to the minor. See 28 HARV. L. REV. 433. And courts generally disallow the plea of contributory negligence. *Pinoza* v. *Northern Chair Co.*, 152 Wis. 47, 140 N. W. 84. *Contra*, *Berdos* v. *Tremont & Suffolk Mills*, 209 Mass. 489, 95 N. E. 876. Nor can assumption of risk be pleaded. *Thomas Madden, etc. Co.* v. *Wilcox*, 174 Ind. 657, 91 N. E. 933. But the contributory fault in the principal case was of a significantly different order. An employer who knows he is hiring a minor under age can reasonably be deprived of the usual defenses, based on conduct of the minor from which the statute meant to save him. It is another thing to make an innocent employer the insurer of minors whose conscious misrepresentations are to be made the source of his absolute liability. Now it has been held that an action for deceit will lie against an infant. *Rice* v. *Boyer*, 108 Ind. 472, 9 N. E. 420. The misrepresentation, by causing the employment, was a proximate cause of the employer's liability. It is, therefore, submitted that the plea of deceit should be good, either by way of counterclaim or to prevent circuity of action. *Cf. Dushane* v. *Benedict*, 120 U. S. 630. The decisions, however, support the principal case. *Inland Steel Co.* v. *Yedinak*, 172 Ind. 423, 87 N. E. 229; *Beauchamp* v. *Sturges, etc. Co.*, 250 Ill. 303, 95 N. E. 204; *Kirkham* v. *Wheeler-Osgood Co.*, 39 Wash. 415, 81 Pac. 869. *Contra*, *Koester* v. *Rochester Candy Works*, 194 N. Y. 92, 87 N. E. 77.

TRADE MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — FAILURE TO COMPLY WITH STATE STATUTE AS BAR TO RELIEF AGAINST UNFAIR COMPETITION. — The defendant, a foreign corporation, engaged in business in Missouri without taking out a license. Thereupon, for the purpose of pirating the business, the complainant corporation organized under the same name, receiving a certificate of incorporation from the Secretary of State. The complainant filed a bill to enjoin the defendant from doing business in the state under its corporate name. The defendant filed a cross bill. *Held*, that the defendant was entitled to judgment on its cross bill. *General Film Co. of Missouri* v. *General Film Co. of Maine*, 237 Fed. 64.

Trade names are acquired by adoption and user and belong to the one who first used them and gave them value. See *Nesne* v. *Sundet*, 93 Minn. 299, 101 N. W. 490. A corporation may choose any name, subject to the rule that it may not choose the name of a corporation already existing, or one that is to be used to deceive the public. See *Van Houten* v. *Hooton Cocoa Co.*, 130 Fed. 600. See NIMS, UNFAIR BUSINESS COMPETITION, § 102. Nor does the issuance of a charter to a corporation under a certain name give it a right to use that name if it was deliberately chosen or used for the purpose of deceiving the public and thereby appropriating the business of another. *Peck Bros.* v. *Peck Bros.*, 113 Fed. 291; *Bender* v. *Bender*, 178 Ill. App. 203. Clearly, then, the defendant had a right to the trade name. Such right is enforceable in equity. For the failure of a foreign corporation to comply with the terms of a licensing statute